IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 21ST MARCH 2005 / 30TH PHALGUNA 1926

Crl.Rev.Pet.No. 851 of 1996(C)

MP.10330/1995 of CHIEF JUDL.MAGISTRATE, ERNAKULAM
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REVN. PETITIONER:

SUDHAKARA K.PRABHU, 40/739.A. M.G.ROAD,
ERNAULAM.

BY ADV. SRI.R.HARIKRISHNAN
SRI.C.A.RAJEEV

RESPONDENTS:

ANTONY D' COUTHA, XV/486, SOUDE-MUNDENVELI.P.O.
COCHIN-682 507.

BY ADV. SRI.SUNNY VARGHESE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21/03/2005, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

CRl.R.P.No.851 OF 1996

Dated this the 21st day of March, 2005

O R D E R

The petitioner herein seeks to quash order dated 29.2.1996 in M.P.No.10330 of 1995 on the file of the Chief Judicial Magistrate's Court, Ernakulam. As per the said order a complaint filed by the petitioner under Section 138 N.I.Act was dismissed. The order under challenge is extracted below:

> "Complainant absent. No representation.
> Complaint is dismissed."

2. The complaint under Section 138 N.I.Act was filed by petitioner before the Chief Judicial Magistrate's Court, Ernakulam and it was taken on file as M.P.No.10330 of 1995. The complaint was filed on 15.12.1995. The court below posted the case to 29.2.1996 for recording the sworn statement of the complainant. On that day petitioner was absent and there was no representation. According to petitioner, the clerk attached to his counsel mistakenly took the date of posting as 27.3.1996 instead of 29.2.1996. On 27.3.1996, petitioner was present before the court

below, to give sworn statement, but the case was not called. On enquiry, it was understood that the date of posting was 29.2.1996 and there was a mistake in noting the date by the Advocate's clerk. The petitioner was also under the bonafide belief that the case was posted to 27.3.1996. The absence was not wilful nor intentional nor was it due to any laches or negligence on the part of petitioner or his counsel. But it was solely due to the mistake committed by the clerk of the petitioner's counsel. An affidavit is filed before this Court by the Advocate's clerk.

3. On hearing both sides and perusing the records available, it is clear that the crucial date of posting, namely, 29.2.1996 was the first hearing date after filing of the complaint. If a party files a complaint, taking all the pain to comply with all legal requirements, it cannot be said that he will not be interested in prosecuting the complaint. It is unlikely that on the first posting date itself, complainant-petitioner will be wilfully absent. For many reasons, a party may not be able to be present in court on a particular date of posting. Either the party may be late in coming to the court and the case could be called before his reaching the court or there may be omission on the part of the counsel to make a representation. There may be cases where dates are mistakenly

taken or the date is forgotten by the party. But no deliberate intention can be attributed to such a party in being absent a court. The court cannot view the absence of complainant in a mechanical manner, without considering the natural events that may occur. A party who approaches the court, may not lose his case merely because of a genuine error, a bonafide mistake etc. Had the court applied its mind to these possibilities, the trial court would not have dismissed the case on the very first date of posting of the case to which the case was adjourned, after filing of the complaint.

4. I am satisfied from the affidavit filed and the facts and circumstances of this case stated above that there was a genuine mistake and I am of strong view that the party may not suffer because of a mistake. It is evident that the court below had not gone into the various aspects and did not consider the matter in the right perspective. The court has to bear in mind that parties approach the court for redressing their grievances. A genuine complaint has to be treated with all respect that it deserves. The court has to bear in mind, the possibilities under which a complainant may be absent that too on the very next day to which the case was posted. Going by normal human conduct, a complainant having taken so much of pain to file a complaint

would not normally remain absent, deliberately.

5. It cannot be said that he wanted to harass anybody in particular. It cannot be said that he was absent to protract the trial or to create any nuisance or problem to the accused. The accused had not been appeared before the court. It cannot also be said that the complaint is filed for the mere sake of spoiling the valuable time of the court. If such matters are kept in mind, it is only possible for the court to understand the situation and act appropriately, in accordance with law. In the facts and circumstances of this case, a dismissal was not contemplated.

In the above circumstances, I find that the order under challenge is unsustainable and I am satisfied that the order under challenge is not sustainable. The order is to be set aside.

In the result,

(i) The order dated 29.2.1996 in M.P.No.10330 of 1995 on the file of the Chief Judicial Magistrate's Court, Ernakulam is set aside.

(ii)The Chief Judicial Magistrate, Ernakulam is directed to proceed with the complaint in accordance with law.

The Revision Petition is allowed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

CRL.R.P.NO.851 OF 1996

O R D E R

21.3.2005